

1 KAREN P. HEWITT
United States Attorney
2 DAVID D. LESHNER
Assistant U.S. Attorney
3 California State Bar No. 207815
Federal Office Building
4 880 Front Street, Room 6293
San Diego, California 92101-8893
5 Telephone: (619) 557-7163
David.Leshner@usdoj.gov

6 Attorneys for Plaintiff
7 United States of America

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,)	Criminal Case No. 08-CR-0884-H
)	
11 Plaintiff,)	DATE: September 10, 2008
)	TIME: 9:00 a.m.
12 v.)	
)	
13 JESUS MARROQUIN-FRIAS,)	UNITED STATES' TRIAL
)	MEMORANDUM
14 Defendant.)	
)	
15 _____)	

16
17
18 COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel,
19 Karen P. Hewitt, United States Attorney, and David D. Leshner, Assistant United States Attorney,
20 and hereby files its Trial Memorandum.

21 **I**

22 **STATEMENT OF THE CASE**

23 **A. INDICTMENT**

24 On March 26, 2008, a one-count indictment was filed charging defendant Jesus Marroquin-
25 Frias with a violation of Title 8, United States Code, Sections 1326(a) and (b). Defendant entered a
26 plea of not guilty on April 10, 2008.

27 ///

28 ///

1 **B. TRIAL STATUS**

2 A jury trial is scheduled for September 10, 2008, at 9:00 a.m. before the Honorable Marilyn
3 L. Huff, United States District Judge. The United States expects its case-in-chief to last
4 approximately one day.

5 **C. DEFENSE COUNSEL**

6 Defendant is represented by appointed counsel, Shaffy Moeel, Esq.

7 **D. DEFENDANT'S CUSTODY STATUS**

8 Defendant is in custody.

9 **E. INTERPRETER**

10 The United States will not require the assistance of a Spanish-speaking interpreter for any of
11 its witnesses.

12 **F. JURY WAIVER**

13 Defendant has not filed a jury waiver.

14 **G. PRETRIAL MOTIONS**

15 On August 18, 2008, the Court granted the United States' motions for fingerprint exemplars
16 and reciprocal discovery.

17 **H. STIPULATIONS**

18 The parties have not entered into any stipulations.

19 **I. DISCOVERY**

20 The Government has fully complied with its discovery obligations. To date, Defendant has
21 not provided reciprocal discovery.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

II

STATEMENT OF FACTS**A. Defendant's Apprehension**

On or about January 2, 2008, Defendant was transferred from state custody to federal custody pursuant to a previously-lodged detainer. Federal law enforcement agents interviewed Defendant and ascertained that he was a Mexican citizen unlawfully present in the United States. Agents placed Defendant under arrest and transported him to the Chula Vista Border Patrol Station for processing.

At approximately 12:48 p.m. on January 2, agents advised Defendant of his Miranda rights. Defendant agreed to make a statement. According to Defendant, he is a citizen of Mexico without documents allowing him to lawfully enter or remain in the United States. Defendant further stated that he previously had been deported and that he had re-entered the United States on or about July 1, 2007 by walking through the mountains near the Tecate, CA Port of Entry.

B. Defendant's Immigration History

Defendant is a citizen of Mexico. On July 2, 1992, Defendant was removed from the United States to Mexico pursuant to an Order of an Immigration Judge. Defendant subsequently was removed from the United States to Mexico on December 2, 1999.

C. Defendant's Criminal History

Defendant has a lengthy criminal history, including the following convictions:

CONVICTION DATE	COURT	CHARGE	TERM
2/15/1984	CASC San Diego	Receipt of Stolen Property (Penal Code § 496.1)	2 years prison
2/15/1984	CASC San Diego	Damage to Prison/Jail (Penal Code § 4600)	16 months prison
1/21/1987	CASC San Diego	Robbery (Penal Code § 211)	2 years prison
3/11/1993	USDC S.D. Cal.	Illegal Entry (8 U.S.C. § 1325) (misdemeanor)	6 months prison

CONVICTION DATE	COURT	CHARGE	TERM
2/15/1984	CASC San Diego	Receipt of Stolen Property (Penal Code § 496.1)	2 years prison
8/07/1995	USDC S. D. Cal	Illegal Reentry (8 U.S.C. § 1326)	63 months prison
11/19/2007	CASC San Diego	Possession of Controlled Substance (Health & Safety Code § 11377(A))	240 days jail

III

APPLICABLE LAW

To establish a violation of 8 U.S.C. § 1326, the United States must prove beyond a reasonable doubt that:

1. Defendant was deported from the United States;
2. After deportation, Defendant voluntarily entered the United States;
3. When Defendant entered he knew he was entering the United States or after Defendant entered the United States he knew that he was in the United States and knowingly remained;
4. Defendant was found in the United States without having obtained the consent of the Attorney General or the Secretary of the Department of Homeland Security to reapply for admission into the United States; and
5. Defendant was an alien at the time of his entry into the United States.

Committee on Model Criminal Jury Instructions - Ninth Circuit, Manual of Model Jury Instructions for the Ninth Circuit, §9.5B (West ed. 2003, modified January 2007); United States v. Salazar-Gonzalez, 458 F.3d 851 (9th Cir. 2006).

IV

WITNESSES

The Government reserves the right to add, omit, substitute or change the order of witnesses. Presently, the Government intends to call the following witnesses during its case-in-chief:

1. United States Border Patrol Agent Sherry Lubin (arresting agent)
2. United States Border Patrol Agent Gerardo Ballesteros (post-arrest statement witness)

3. United States Border Patrol Agent Sean Braud (A-File custodian)
4. David Beers, Fingerprint Expert

V

EXHIBIT LIST

The Government will provide a final exhibit list on the morning of trial. Presently, the Government intends to offer into evidence the following:

1. Notice of Intent/Decision to Reinstate Prior Order (dated 05/12/99)
2. Order of the Immigration Judge (dated 07/02/92)
3. Warrant of Removal/Deportation (dated 11/29/99)
4. Certificate of Non-Existence
5. Advice of Rights form
6. Defendant's Mexican birth certificate

VI

PROPOSED VOIR DIRE

1. Of those of you who have sat on criminal juries, did any of those juries fail to reach a unanimous verdict?
2. Has anyone had an unpleasant experience with any law enforcement personnel?
3. Has anyone had any disputes with any agency of the United States Government?
4. Does anyone have relatives or close friends who have been investigated, arrested, accused or charged with a crime?
5. Does anyone have relatives or close friends who have been deported or removed?
6. Does anyone have strong feelings about the United States Border Patrol or any other federal agency involved in immigration issues?
7. Does anyone believe that our country's immigration laws are too harsh?
8. Does anyone believe everyone should be allowed to enter the United States?
9. Does anyone believe that it should be legal to enter the United States without authorization?

///

10. Does everyone understand that as a juror your duty is to apply the law regardless of whether you disagree with it?
11. Does everyone understand that the laws of the United States equally apply to everyone who enters the United States?
12. Does everyone understand that as a juror you are not to consider prejudice, pity or sympathy in deciding whether the Defendant is guilty or not guilty?
13. Does anyone think that, regardless of the strength of the evidence, they will have trouble deciding whether the Defendant is guilty or not guilty?
14. Does anyone think they cannot decide whether a person is guilty or not guilty?
15. Does anyone have religious or moral beliefs which will make it difficult for them to make a decision strictly based on the law and facts of this case?

VII

JURY INSTRUCTIONS

The United States will submit proposed jury instructions under separate cover.

DATED: September 4, 2008.

Respectfully submitted,

Karen P. Hewitt
United States Attorney

s/ David D. Leshner
DAVID D. LESHNER
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Case No. 08-CR-0884-H
)	
Plaintiff,)	
)	
v.)	
)	CERTIFICATE OF SERVICE
JESUS MARROQUIN-FRIAS,)	
)	
Defendant.)	
_____)	

IT IS HEREBY CERTIFIED THAT:

I, DAVID D. LESHNER, am a citizen of the United States and am at least eighteen years of age.
My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **UNITED STATES' TRIAL MEMORANDUM** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Shaffy Moeel, Esq.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 4, 2008.

/s/ David D. Leshner
DAVID D. LESHNER